

June ~~28~~,30 2000

TO: Members of RTO Legal Sub Group B (Public Participation, TCAs and Existing Contracts)  
FROM: Marcus Wood  
RE: Outline of Transmission Control (or Operating) Agreement and Potential Revisions Thereto With Revisions (through noon, June 30, 2000) Proposed by Legal Work Group Members

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The Transmission Control (of Operating) Agreement ("TCA") is a bilateral agreement between the RTO and a transmission facility owner. It is designed so that the RTO may enter new TCAs without involving previously-signing transmission owners.

#### General Comments

BPA -- (1) Agreement only applicable to Initial Participating Transmission Owners. Another agreement will be needed for transmission owners who subsequently join. (2) We envision the RTO-BPA Agreement as incorporating an exhibit which would contain the performance standards required by BPA to participate in the RTO. (3) There doesn't seem to be a provision which specifically transfers control of the Transmission Facilities from the Executing Transmission Owner to the RTO.

PPC -- Public entities may need a mechanism similar to the exhibit proposed by BPA to ensure that any delegation of control over transmission facilities to RTO-W is legal. B.C. Hydro – Wording needs to accommodate Canadian participating transmission owners.

IPP Groups – Qualifying Facilities (QF's) are unique in that they usually operate continuously, are required to maintain minimum steam flows to industrial processes, are required to meet PURPA thermal output requirements to maintain QF status, and have long-term, must-take Power Purchase Agreements. There are also safety and environmental concerns that require near-continuous operation. The IndeGO documents did not explicitly address integration of QF generation facilities into the RTO, nor the integration of QF or Merchant generation connected to the distribution side of an Executing Transmission Owner's T/D split. Language must be added stating that these facilities may elect, but are not obligated, to sign a GIA with the RTO. Reliance on past, undocumented IndeGO resolutions will not suffice. QF's and Merchant plants located on the distribution side of the T/D split need to be assured that either: 1) they will be exempt from the RTO's remedial action schemes (RAS), or, 2) that they will be kept whole on any lost profits and consequential damages resulting from RTO RAS. Support retaining the current TCA language stipulating that the expedited dispute resolution procedures

will be used to resolve any conflicts regarding interconnection of new merchant or distributed generation facilities. QF and Merchant generation on the distribution side of the T/D split needs to be accounted for in the initial allocation of transmission capacity reservations.

1. Definition of Terms. The key terms are defined in Exhibit A to the agreement (Schedule of Definitions).  
CHANGES: NO SUBSTANTIVE CHANGES TO THE SCHEDULE OF DEFINITIONS, EXCEPT AS DEFINITIONS ARE MODIFIED OR DELETED AS A RESULT OF SUBSTANTIVE CHANGES REFERENCED IN OTHER SECTIONS OF THE AGREEMENT. THE DEFINITIONS (AND PROVISIONS GENERALLY) MAY NEED TO BE FINE-TUNED TO COMPORT WITH ORDER 2000 LANGUAGE AND TO REMOVE REFERENCES TO INDEGO.

PPC -- Has any analysis been done with regard to "Confidential Information" and a public's obligation to provide information under a FOIA request?

Tribes – Definition of a “State” should include any regulatory body with rate jurisdiction within a geographic area (including tribes).

ITC – Do definitions accurately pick up ITC participation?

2. Effective Date; Operations Date(s); Term and Termination; Withdrawal.  
2.1 -- The agreement becomes effective upon FERC's acceptance for filing or confirmation and approval. The agreement does not become effective if FERC or the courts order it modified in a manner unacceptable to either party. 2.2 – The RTO shall exercise all reasonable efforts to commence Transmission Services (other than Congestion Clearing), as well as Ancillary services by a specified date (which would be December 15, 2001). The RTO shall exercise all reasonable efforts to commence providing Congestion Clearing by a specified later date (which would be December 15, 2002). 2.3 – The Participating Transmission Owners may terminate by mutual agreement of all Participating Transmission Owners and the RTO. 2.4 – The Executing Transmission Owner may withdraw for any reason on two years notice. 2.5 – If the owners of more than 80% of the transmission facilities controlled by the RTO form a transco (see definition of “Regional Transmission Company” as used in this section), such owners may withdraw on six months notice.  
CHANGES: THE 80 PERCENT THRESHOLD FOR WITHDRAWAL OF A TRANSCO MIGHT BE REVIEWED. IN ADDITION, BPA MAY NEED A BROADER RIGHT TO WITHDRAW IF ITS STATUTORY OBLIGATIONS ARE NOT BEING MET. THE IMPLEMENTATION DATES NEED TO BE CHANGED FROM THOSE IN THE INDEGO TCA.

BPA -- (Sections 2.2.2 and 2.2.2) These two provisions should be combined into one because of the expectation that Congestion Clearing will be initiated with the beginning of RTO operation.

Enron -- (Section 2.2.1) Must be amended – Order No. 2000 requires RTO to be Ancillary Service provider of last resort.

PPC -- (Section 2.1) RUS issue may need to be revisited for coops. [does anybody know anything about this?]. (Section 2.5) If RTO West transitions from an not-for-profit ISO to a for-profit Transco, what implications does this have for the public's participation? Publics might need the same broader right to withdraw that BPA needs if their respective statutory obligations aren't being met.

ITC – The 80% withdrawal is dated and probably needs to be changed .

3. Additional Participating Transmission Owners. 3.1 – The RTO may execute additional TCAs. 3.2 – The Executing Transmission Owner may object if a new TCA (1) would cause the RTO to violate the terms of this agreement or (2) will or may be inconsistent with rights granted under this agreement. Any such objection shall be subject to Dispute Resolution. 3.3 – If a new TCA contains more favorable terms than this agreement, this agreement may be revised to incorporate similar terms.  
CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.

Enron -- In Order No. 2000 the FERC required open architecture (and RTO enabling agreements): (1) to allow basic changes in organizational forms of RTO (2) to reflect changes in facility ownership and (3) to allow revisions to corporate strategies. Section 3 should be reviewed to ensure that it facilitates compliance with this requirement.

4. Integration and Physical Interconnection. 4.1 – The RTO shall use the forms of Generation Integration Agreement and Load Integration Agreement specified in Exhibit B for interconnections with the transmission facilities of the Executing Transmission Owner. 4.2 – The Executing Transmission Owner must permit new physical interconnections requested by third parties, if specified conditions are met, and must cooperate with the interconnecting party. The RTO may compel expedited Dispute Resolution if the terms for interconnection are not agreed within 60 days of the interconnection request.  
CHANGE: THIS PROVISION MIGHT NEED TO BE ALTERED TO PERMIT ONE-STOP SHOPPING AT THE RTO FOR INTERCONNECTIONS. ONE SUB GROUP MEMBER IDENTIFIED AS AN INDEPENDENT TRANSMISSION COMPANY ISSUE THE QUESTION OF WHO WOULD BE AUTHORIZED TO CONSTRUCT NEW TRANSMISSION FACILITIES; ANY RESOLUTION OF THIS ISSUE BY THE APPROPRIATE WORK GROUP SHOULD BE INCORPORATED INTO THIS AGREEMENT.

BPA -- Should make clear that the RTO does not have the right to institute dispute resolution after 60 days, if the third party is willing to continue discussions.

Enron -- Agree with Marc's comments that this provision should be altered to permit one-stop shopping at the RTO for interconnections. In fact, I think this result would be required by the *Tennessee Power* case, and other recent cases where the Commission has said that interconnection should be provided under the open access tariff. If the RTO

must provide service under the open access tariff, then the RTO must do interconnections.

Seattle -- Section 4.2: We think that this section should be expanded to allow the Executing Transmission Owner ("ETO") to deny any proposed physical interconnection that the ETO reasonably believes will compromise its ability to service its native load. This issue of interconnection may also be affected by the current debate in other subcommittees over which facilities are included in the RTO. For example, an IPP may have to pursue an interconnection agreement with a local distribution system if the line between RTO transmission and local distribution is at 230 kV. Also, we feel that the provision for the RTO's "right to compel expedited resolution" in 4.2.2 goes too far. FERC may compel under its statutes, but not an RTO. Finally, it is not clear who is responsible to pay the cost of a new interconnection.

PPC -- Section 4.1: Where new generation will reach the RTO-W by way of lines not part of the RTO, the local distribution utility must retain control over its lines sufficient to allow it to protect the safety and reliability of those lines when new generation seeks to interconnect. New interconnection also raises private use issues and we will need to resolve who bears the costs of refinancing tax-exempt debt in those circumstances, the generator or the RTO.

ITC – ITC companies assume they will negotiate interconnection agreements, subject to RTO standards. The one-stop shopping needs to consider a process to refer back and forth between the ITC and the RTO. This could be an issue, and does involve other work groups, i.e., planning and implementation. Anyone should be able to construct anywhere.

IPP Groups -- Are QF and Merchant generation facilities interconnected with the Executing Transmission Owner's distribution system (rather than with RTO-controlled transmission facilities) "controlled" by the Executing Transmission Owner? If "yes," such generation must be listed in the Executing Transmission Owner's GIA. If "no" then specific language needs to be added to the TCA giving owners of such generation facilities the option, but not the obligation, of signing a GIA with the RTO. Section 4.2.1: Retain current language because it supports FERC's policies of open, non-discriminatory access and inciting the new-and distributed-generation markets to respond to regional congestion problems. We need to prevent a repeat of the types of allegations being made these days on the distributed-generation front; disagree with Seattle's comments. Section 4.2.2: Retain current language, as it protects both the participating transmission owner as well as the purveyors of new load or generation projects. If there is any concern that the selected arbitrator will be biased, then we probably need to revise Section 21.2.4 and not the language of Section 4.2.2; disagree with Seattle's comments.

5. The RTO's Provision of Transmission Services. 5.1 – The RTO must provide at least six months in advance of its commencement of operations a comprehensive plan for the orderly, safe and reliable transfer of Transmission Service functions. Challenges to the plan shall be subject to Dispute Resolution. The RTO shall provide at least 90 days notice of the Transmission Service Commencement Date. The RTO shall be the exclusive provider of Transmission Services (including those provided under Pre-Existing Transmission Agreements that remain in effect) after the Transmission Service Commencement Date, and the Executing

Transmission Owner shall no longer be obligated to provide of such services. All transmission service agreements entered between the date of the TCA and the Transmission Service Commencement Date shall include a right of either party to such agreement to replace the agreement with an RTO transmission agreement. 5.2 – The services to be provided by the RTO are spelled out. (To accommodate existing laws, the BPA TCA would provide that if the RTO receives requests for Northwest service and out-of-region service, and cannot honor both, the Northwest request shall be granted first.) 5.3 – If the Executing Transmission Owner acquires new transmission facilities located within the RTO Control Area, such facilities shall be added to Exhibit C of this agreement; provided that the planning for such facilities shall be subject to the processes specified for the Planning Issues Committee and the Area Planning Issues Committee. 5.4 – The RTO shall satisfy all transmission service requirements of the Executing Transmission Owner. The Executing Transmission Owner may compete with the RTO to provide Ancillary Services.

CHANGES: THE RTO PLANNING REQUIREMENTS, INCLUDING REFERENCES TO THE PLANNING ISSUES COMMITTEE AND THE AREA PLANNING ISSUES COMMITTEE, NEED TO BE REVIEWED AND MAY BE CHANGED. THE RTO FUNCTIONS OF MARKET MONITORING AND INTERREGIONAL COOPERATION NEED TO BE ADDED. THE PRESERVATION OF PLANNING RIGHTS BY AN INDEPENDENT TRANSMISSION COMPANY SHOULD BE SPELLED OUT.

BPA -- In section 5.1.3, in last sentence, add “or a court of competent jurisdiction” after “FERC.” (Section 5.4.1 and 5.4.2) in last sentence, add “or a court of competent jurisdiction” after “FERC.” (Section 5.2.8) RTO should be required to use Generally Acceptable Accounting Principles (GAAP). (Section 5.3) With respect to the proviso, the inclusion of the cost of new Transmission Facilities in the Executing Transmission Owner’s revenue requirement should be guaranteed if the Executing Transmission Owner was required to construct them, either by the RTO or by FERC or other applicable authority.

Enron -- Section 5.2.3 (regional preference) does not meet the FERC’s open access requirements and does not even provide the level of non-discriminatory service provided by BPA’s existing tariff.

Seattle -- Provisions of subsections 5.3. and 5.4. are subject to the overall policy of facilities to be included in the RTO, which is yet to be decided. Transmission facilities that are local subtransmission or generator tielines should not be automatically included in the RTO. One result of this is that certain transmission service, e.g. radial gen-tie deliveries, are not necessarily provided by the RTO. (Section 5.3) In the first sentence, I think "of the types identified as Transmission Facilities" language would be vulnerable to subjective interpretation. I suggest something more along the lines of "which are consistent with the definition of Transmission Facilities in Exhibit C". Then, of course we need to work on that definition to get it right!

PPC -- Section 6.1: I already sent a comment to Marcus that the manner in which existing contracts are handled is a substantive matter still open to debate, and this

language may need to be changed depending on if and how existing contracts are grandfathered.

ITC – Is reference to “exclusive” provider accurate? For facilities not in the RTO, service may still be provided. Also, the ITC has an interest in having some services provided outside the RTO, i.e. balancing authority. This is an issue and does involve other work groups.

IPP Groups -- Section 5.2.3: Concur with Enron comments regarding regional preferences, but we also acknowledge that existing federal law may impact regional preferences. Sections 5.3 and 5.4: Retain current language, because definition of "Transmission Facilities" contained in Exhibit A provides a default rule for classifying facilities and also provides the flexibility for participating transmission owners to exclude generation tie-lines from Exhibit C; disagree with Seattle's comments.

6. Pre-Existing Transmission Agreements. 6.1 and 6.2 -- As of the Transmission Service Commencement Date, the RTO shall replace the Executing Transmission Owner as the provider of Transmission Services under the Pre-Existing Agreements listed in Exhibit D, and except as specified in Exhibit D, as the provider of all Ancillary Services under such Pre-Existing Agreements. (All obligations under Pre-Existing Transmission Agreements among Participating Transmission Owners shall be suspended, except that the Participating Transmission Owners may preserve any rights they might have to collect stranded costs under such agreements.) 6.3 – Service under all Pre-Existing Transmission Agreement shall be scheduled directly with the RTO.  
CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.

BPA -- The note indicates that existing transmission services agreements among Executing Transmission Owners should be suspended and extended beyond their stated terms for as long as the party providing service is a Participating Transmission Owner. The ability of the other party (the customer) to return to an extended agreement should be limited to the situation in which the party which had been providing service prior to its participation in the RTO terminates its Transmission Control Agreement. This right of the customer to return to an agreement which has been extended beyond its stated term should not be available if the customer itself withdraws from the RTO while the provider continues to be a Participating Transmission Owner. (Section 6.2) BPA cannot, in the absence of TCA standards as to what provisions should be suspended, submit to an arbitrator the decision as to which provisions of an existing contract with an Additional Participating Transmission Owner should be suspended. (Section 6.3) Add “or a court of competent jurisdiction” after “FERC” in last sentence.

Snohomish -- Section 6 of the TCA may need to be changed depending on how existing contract rights are handled.

ITC – Transmission owner merchant functions, i.e., Avista utility merchant function, now sells load following. Those contracts do not go to the RTO, and the issue of who can provide ancillary services is being looked at by another work group. Legal needs to follow that result.



7. Control and Operation of Transmission Facilities; Ancillary Services. 7.1 -- The RTO shall provide at least six months in advance of the Operational Control Commencement Date a comprehensive plan for the orderly, safe and reliable transfer of Operational Control functions, together with Congestion Clearing. Any dispute concerning such plan shall be subject to Dispute Resolution. The RTO shall provide at least 90 days notice of the specific Operational Control Commencement Date. Exhibit E shall be amended as necessary to add any newly-acquired transmission facilities subject to the RTO's Operational Control. 7.2 – The RTO shall be the security coordinator for transmission facilities under its control. 7.3 – The continuing operational rights and obligations of the Executing Transmission Owner are spelled out. The RTO shall have the right to approve or reject proposed transmission maintenance outages. If requested by the RTO, the Executing Transmission Owner shall bid a price for which it will provide temporary Operational Control should the RTO control facilities fail. 7.4 – The RTO shall solicit bids for Ancillary Service. If the RTO determines that it has insufficient voluntary bids, the RTO may compel the Executing Transmission Owner to submit a bid for Ancillary Services it is capable of providing, for a price not to exceed the maximum price as approved by the FERC. 7.5 – The RTO may not require the Executing Transmission Owner to violate NERC or WSCC requirements, its FERC licenses or applicable governmental laws or regulations.

CHANGES: THE PROVISIONS RELATING ANCILLARY SERVICES NEED TO BE REVIEWED AFTER THE ANCILLARY SERVICES WORK GROUP HAS COMPLETED ITS WORK, TO ASSURE CONFORMITY WITH THE CONCLUSIONS OF THAT WORK GROUP.

BPA --(Section 7.1.1) To provide the arbitrator with standards, the following wording should be added after “comprehensive plan” in last sentence: “to effect an orderly, safe and reliable transfer of Operational Control functions, including Congestion Clearing”. Also, add the following language to the end of the sentence:; “and the Executing Transmission Owner shall have no obligation to transfer Operational Control of its Transmission Facilities until the conclusion of the dispute resolution process.” (Same comments applicable to section 5.1). (Sections 7.2 and 7.3.6) RTO needs to adopt the language which was negotiated into the Pacific Northwest Security Coordinator agreement to address Federal sovereignty issues. (Section 7.3.5) Executing Transmission Owners should have a deadline by which to submit information on proposed maintenance outages, such as minimum of 45 days prior to the event. (Section 7.3.8) Eliminate this paragraph. Substitute: “RTO shall establish a back-up control center and, in the event of its failure, the Executing Transmission Owner shall take over control of its Transmission Facilities.” (Section 7.5) Relabel as “Regulatory Criteria”. Change wording to “not be required to take actions that would violate NERC or WSCC criteria, its FERC licenses, other FERC requirements, its NRC licenses or NRC requirements, applicable governmental laws or regulations, and its safety and environmental responsibilities.” In addition, RTO West should, as allowed by Order 2000, be required to pay expenses

incurred by Transmission Owners whose approved maintenance schedules have been altered by the RTO.

Enron -- (Section 7.3) In Order No. 2000, FERC required the RTO to have operational authority for all transmission under its control. I wonder whether a provision that requires the transmission owner to continue to operate the control center complies with this requirement.

PPC -- (Section 7.1) It's not clear whether surrendering "operational control" over its transmission system to RTO-W would be an allowable delegation of authority for publics. (Section 7.3) These provisions may have to be revisited in light of the work of the Implementation WG on the Security Coordinator, personnel, communications, etc. (Section 7.5) References to NERC and WSCC should include "or successor organizations."

ITC – Should security coordination remain in PNSC and be supplied to the RTO by contract?

IPP Groups -- Section 7.2: Revise last sentence to read as follows: "As Security Coordinator, **and in accordance with the provisions of section 9 and any Integration Agreements**, RTO West shall have authority..." Section 7.3.3: Revise last sentence to read as follows: "In accordance with RTO West's overall direction, **and the provisions of section 9 and any Integration Agreements**, the Executing ...." Because QF's have unique operational characteristics, any Generation Integration Agreements between RTO and these facilities may contain special provisions (such as minimum steam output restrictions) that could impact RTO's security decisions.

8. Transmission Facilities Management: 8.1 – The Executing Transmission Owner must continue to maintain its facilities. 8.2 – The RTO and the Executing Transmission Owner shall jointly develop a Transmission Facilities performance plan. The performance plan shall specify appropriate consequences for non-compliance. 8.3 – The Executing Transmission Owner shall initiate and prioritize Transmission Facility restoration after an outage as directed by the RTO. 8.4 – The Executing Transmission Owner shall submit an annual report on its compliance with the performance plan. 8.5 – The Executing Transmission Owner may fully participate in any Dispute Process related to another transmission owner's performance plan.

**CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.**

BPA -- . The intent of Section 8.1 should be clarified. (Section 8.2) Change the time period from 3 years to 1 year, after which either Party may institute dispute resolution. (Section 8.3) In last sentence, after "shall be authorized", add "on a nondiscriminatory basis".

Seattle -- (Section 8.2) We think these Performance Plans that are individually developed between the RTO and each ETO need to be based on common criteria so that there is some assurance that every participant is meeting the same standard. If an ETO joins up with a transmission system that has not be adequately maintained, who will pay to get it up to the standard? Also, the "appropriate consequences" for Performance Plan



violations should be consistent between ETO's so everyone is getting the same treatment. (Section 8.4) The Annual Reports prepared by ETO's should be based on a common format with well defined criteria so that comparability of performance will be clear to all parties.

PPC -- (Section 8.2) For publics, performance plans should identify legal constraints as well as reliability, availability and cost constraints on Transmission Facility expansion.

9. Critical Control Facilities. 9.1 – Exhibit F lists the RTO Critical Control Facilities. Exhibit F may be amended at the request of the RTO. 9.2 – The RTO may manually or automatically control the Critical Control Facilities. 9.3 – The Executing Transmission Owner shall make good faith efforts to maintain Remedial Action Schemes until the later of the expiration of applicable remedial action contracts or three years from the Transmission Service Commencement Date. 9.4 – The Executing Transmission Owner may include in its rates to the RTO any (1) contract compensation, or (2) incremental costs, for maintaining Remedial Action Schemes.

CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.

Enron -- Section 9.2 The first sentence of this section does not inspire confidence that the RTO will be operating these critical control facilities. Also, what about other transmission under the RTOs control? Order No. 2000 doesn't distinguish between critical and uncritical, it says "all."

Seattle -- Section 9.1: The designation of Critical Control Facilities should be based on clear criteria that are evenly applied to all. Also, there should be a clear demarcation of liability that is assumed by the RTO when RTO is in control of an ETO's facility.

ITC – Needs to accommodate ITC rate structure.

DSIs (Murphy) – The Executing Transmission Owner may include in its rates to IndeGO pursuant to Section 14.1 and 14.2 and (1) contract compensation (2) in the absence of contract compensation, incremental costs to it for **establishing, implementing and** maintaining Remedial Action Scheme(s) pursuant to this Agreement. Such costs may include insurance payments to protect against equipment damage and foregone profits when generation **or load** is interrupted, but shall not include equipment damage.

BPA – Section 9 (and other sections): Order 2000 requires the RTO to have operational control of **all** transmission facilities within its system. The TCA, however, refers to RTO operational control only over “IndeGO Controlled Transmission Facilities” which are specified in Exhibit E. A longer list (presumably) of facilities is contained in Exhibit C, the Transmission Facilities which the Transmission Owner is including in the RTO system. Section 9.2: In second to last sentence, add “transmission” before “maintenance outage schedules.” In last sentence the intent of “shall maintain the settings and functionality” should be clarified. Section 9.4: Are incremental RAS costs only to be paid for “maintaining” the RAS or also for the effects of actually implementing the RAS? Are “foregone profits” to be paid, or only insurance for foregone profits? What if load interruption, instead of generation interruption, comprises the RAS? Is anything paid?  
IPP Groups -- Section 9.1: Will the RTO be allowed to designate QF and Merchant generation interconnected behind the T/D split as Critical Control Facilities? If "yes,"

then these facilities will have to sign GIAs with the RTO (or be included in an Executing Transmission Owner's GIA), and any special provisions contained in the GIA's to accommodate unique QF operating requirements will need to be considered. See comments to Section 4.1 above. Section 9.2: Revise first sentence to read as follows "...and consistent with applicable third party contract rights **and any applicable Integration Agreements**, the Executing..." Assuming that QF and Merchant generation facilities located on the distribution side of the T/D split, are "otherwise subject to [Executing Transmission Owner] control," then this section applies and the RTO is essentially stepping into the shoes of the executing transmission owner ("Operational Control"), something the QF or Merchant contract may or may not provide for without the express written consent of the parties-. What if the QF or Merchant contract does not provide for RAS, and the RTO requires equipment to be operated at higher levels than manufacturer recommendations or warranty standards? These issues are probably best reconciled in the Generation Integration Agreements, not in the TCA. Section 9.4: What if the existing QF or Merchant contract does not contemplate RAS or compensation for RAS, and insurance is not reasonably available "to protect against equipment damage and foregone profits when generation is interrupted?" It is clear that a generator's lost profits claims would be recoverable by the Executing Transmission Owner from the RTO as "incremental costs to it for maintaining RAS." However, if equipment damage insurance is not available, does the Executing Transmission Owner need to self-insure and eat any third party equipment damage claims arising from RTO RASing of generation? What if the RTO requires equipment to be operated at higher levels than manufacturer recommendations or warranty standards, thereby causing equipment damage? Recommend that these types of costs not be concentrated on the individual Executing Transmission Owners, but be socialized, regardless of whether insurance is available or not. The sinking fund concept mentioned in the June 27 meeting could be a workable solution in the event of insurance market failure.

10. Other Support System Requirements. The RTO and the Executing Transmission Owner may enter written agreements for the RTO to use communication equipment of the Executing Transmission Owner.  
CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.

PPC -- (Section 10) RTO's use of equipment belonging to publicly owned utilities - Does this conflict with any state statutes or regulations governing publics?  
BPA – Much like section 8.1, the duties envisioned by this subsection should be further clarified.

11. RTO Compliance and Coordination Standards. The RTO shall comply with Good Utility Practice and other applicable standards, shall respond to service requests in accord with FERC requirements and shall participate in applicable reliability organizations.  
CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.

BPA – Section 11.1: The obligation to comply with “applicable requirements” is not meaningful since some will argue that “requirements” do not currently exist, only criteria and voluntary arrangements. The RTO should execute a WSCC Reliability Management System contract and a sentence requiring the RTO to implement the RMS program and the WSCC Regional Security Coordination Plan should be added.

12. Support of Upgrade and Expansion of Transmission Facilities. The Executing Transmission Owner shall support upgrades and expansion to the Transmission Facilities. This cooperation shall include accommodating interconnections, upgrades or expansions to the Transmission Facilities and cooperation with efforts to obtain necessary siting and other permits and licenses and rights-of way. To the extent requested, the Executing Transmission Owner shall exercise its eminent domain authority and take other necessary actions to acquire rights-of-way as needed. (This right-of-way obligation may be unenforceable against BPA.) If the requested support is not provided, the RTO may petition FERC to require the requested action under section 211 of the Federal Power Act.

CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.

Enron -- I don't know why a Section 211 proceeding should be the only way to get a transmission owner to act. This would be a step back from the existing pro forma tariff where a customer can simply demand service and the transmission provider must provide it under the tariff.

Seattle -- Section 12.3: Seattle City Light, as a public utility, would like to see some alternatives to this obligation to exercise Eminent Domain Authority upon the request of the RTO. For publics that find eminent domain to be too heavy handed, maybe the language in 12.3 should be modified to allow for more palatable alternatives, such as: "(1) exercise eminent domain authority or take other necessary actions,....". In any case, at the very least the affected ETO should be empowered in the planning process to help design and site a facility upgrade or expansion that will have the least adverse impacts on its system and customers.

PPC -- (Section 12.3) Need to retain the "to the extent permitted by applicable law" since we probably can't delegate our eminent domain authority. We also agree with Seattle's comments that we should be able to use less coercive measures than eminent domain, if available. (Section 12.4) For publics, FERC Section 211 remedy should be limited to those instances where the utility qualifies as a "transmitting utility" under the FPA.

States – States should not face claim of preemption with respect to siting of transmission facilities by state jurisdictional utilities that execute TCAs.

BPA – Section 12.4 should be combined with section 12.3.

13. Planning. 13.1 -- The RTO and the Executing Transmission Owner shall participate in specified planning organizations. 13.2 -- The RTO shall

consider proposals for additions or modifications to the RTO Transmission System facilities. 13.3 – The RTO’s planning functions are spelled out.

CHANGES: THE PLANNING PROVISIONS SHOULD BE REVIEWED IN THEIR ENTIRETY BASED ON THE WORK OF THE PLANNING WORK GROUP AND MAY NEED TO BE SUBSTANTIALLY MODIFIED.

Enron -- Assumes the existence a “Planning Issues Committee.” (Section 13.2) Nothing should prohibit 3<sup>rd</sup> parties from building transmission. This planning proposal is too “Command and control” – rather before the RTO plans any transmission, it should provide information to the market and allow the market to respond (and I don’t mean RFPs, I mean pure third party actions) to the extent possible before planning anything. BPA – Section 13.3.1: Order 2000 requires the RTO to assume planning responsibilities for the entire RTO system, whereas this paragraph limits that function to a subset of the facilities (i.e., only for IndeGO Controlled Transmission Facilities rather than for all Transmission Facilities. Also, delete the word “primary.” Section 13.3.5: We are unclear as to why the Transmission Owner should be able to pursue a path rating for its Transmission Facilities.

IPP Groups -- Concur with Enron comments. Delete the words "Upon the request of the Executing Transmission Owner," from the first sentence. At transmission Planning Workshop on June 13, consensus was that the RTO planning unit would present proposed transmission expansion projects to the markets and afford an opportunity for competing transmission, generation, DSM or distributed-generation projects to come forward with better economics. RTO would then evaluate competing projects and select most viable one. Funneling all competing proposals through Executing Transmission Owners is not consistent with open access.

14. Executing Transmission Owner’s Rate Schedule. 14.1 -- The Executing Transmission Owner shall charge and the RTO shall pay the charges set forth in the Executing Transmission Owner’s applicable rate schedules. The charges shall include monthly payments for the RTO’s right to schedule all Transmission Services over the Transmission Facilities, to collect all revenues for such services and to collect compensation for any ancillary Services that the RTO directs the Executing Transmission Owner to provide. 14.2 – For FERC jurisdictional utilities, the rates shall be as filed with and accepted by FERC from time to time. For BPA, the rates shall be as established under applicable federal statutes. For publicly-owned utilities and cooperatives, rates shall be set as provided under applicable law. 14.3 – Rates under Pre-Existing Transmission Agreements among Participating Transmission Owners shall be suspended. 14.4 – Rates of the Executing Transmission Owner must be revised by it at least once every five years. 14.5 – The Executing Transmission Owner preserves its pre-existing rights to recover Stranded Costs. This section has language that protects RTO customers from having the RTO pricing shift Stranded Costs to customers that would not have paid such Stranded Costs absent the RTO. 14.6 – The Executing

Transmission Owner shall provide specified financial information to the RTO annually.

CHANGES: THIS ARTICLE MAY BE CHANGED TO BETTER ACCOMMODATE PERFORMANCE-BASED PRICING. IN ADDITION, IT NEEDS TO BE MODIFIED TO ACCOMMODATE THE CONCEPT OF A PAYMENT AGENT, RATHER THAN THE RTO, AS THE COLLECTOR OF TRANSMISSION REVENUES. ONE SUB GROUP MEMBER RESERVED THE RIGHT TO MORE CLOSELY REVIEW THE STRANDED COST PROVISIONS TO ASSURE THAT THEY WORK IN ALL APPLICABLE SITUATIONS.

Enron -- The references to “charges” in Section 14 should be changed to “revenue requirement.” We should add provisions indicating that the RTO has its Section 206 rights. (Section 14.3) The last sentence should be deleted because it would violate the Federal Power Act and remove the RTO and others’ rights to rate suspension and a hearing on the revenue requirements of the transmission owners. Or you could say such revision shall become effective “pursuant to applicable law.” (Section 14.4.1) What is the reason for this provision? (Section 14.5) This section should also reserve the RTO’s Section 206 rights to challenge the Transmission Owner’s filings and tariffs. (Section 14.6) We might want to say FERC Form No. 1 as it exists at the time of the agreement because FERC periodically considers changing this form.

Duncan, Weinberg -- The stranded cost language is too vague and open ended.

PPC -- (Section 14.2) I believe the language proposed for WAPA and the publics adequately protects our ratemaking authority. Any disagreement? (Section 14.4.1) The publics need to take a look at whether we can contractually obligate our governing bodies to revisit RTO-W rates every five years. There may be a less direct way to achieve the same result. For example, I believe we could safely contract to have staff review the RTO-W rate schedules every five years and propose any necessary changes to our governing bodies. (Section 14.4.2) I don't think we can obligate our governing bodies to delay imposing rate increases for 120 days. Again, there may be a less direct way to achieve the same result.

DSIs (Early) – Wants to review stranded cost resolution.

ITC – Is it clear that bundled contracts are not included in 14.3 suspension?

BPA – Section 14.1: The reference to “collect all revenues for such services” needs to be coordinated with the Payment Agent concept. In the Bonneville Power Administration section, add “existing or” before “any new legislation” in last sentence. Section 14.4.2: The October 1 effective date for rates will work for BPA only if it receives interim or final approval of its filing from FERC by that date. Section 14.5: Payment Agent issue in last sentence.

15. **RTO Tariffs.** 15.1 – The RTO’s rates shall be as filed with and as accepted by FERC. 15.2 – The rate allocation methodology for the first ten years after the Transmission Service Commencement Date is specified. 15.3 – Any amounts payable by the RTO to a non-FERC jurisdictional utility that would not be allowed under FERC standards applicable to public utilities under the Federal Power Act, shall be collected only through Access Charges paid by loads taking Transmission Service at

points of delivery of the applicable non-FERC jurisdictional utility. 15.4 – The allocation of the costs of the loss of tax-exempt bonds is specified. CHANGES: THE RATE ALLOCATION METHODOLOGY SPECIFIED IN SECTION 15.2 PROBABLY WILL CHANGE, BUT A PROVISION OBLIGATING THE RTO TO FOLLOW THE AGREED METHODOLOGY WILL NEED TO BE RETAINED.

Snohomish -- I would like to reserve the right to revisit the provisions of Section 15 regarding refinancing of tax-exempt debt. I haven't yet had a chance to discuss this provision with my bond counsel.

Duncan Weinberg -- I have some questions regarding the "shall be collected only through Access Charges paid by loads," what is meant by "loads" in this context.

PPC -- The provisions governing recovery of costs for defeasance of tax-exempt bonds need to be reviewed in light of the Treasury's temporary regulations on the private use question and other recent legal developments. Also, the allocation of defeasance costs between the local Area and the RTO should be revisited in light of decisions made by the Pricing WG. Finally, the publics need to make sure the provisions for recovery of bond defeasance costs where a bond covenant is violated by assignment of transmission functions to the RTO is adequate.

ITC – Is the language of 15.1 worded to accommodate ITC separate tariff (revenue requirement) rates? Bold comment seem alright, but there needs to be a remedy for conditions of giving RTO control, i.e., what if permanent Company Rates were adopted, but later changed after state commission approval is obtained?

16. Transmission Capacity Reservations. Exhibit G sets out Transmission Capacity Reservations granted to replace (1) firm transmission reservations to serve native load; (2) firm transmission reservations to supply electric power under wholesale and retail power contracts; (3) firm transmission reservations to satisfy obligations under Pre-Existing Transmission Agreements with parties that are not Participating Transmission owners; and (4) ownership and contract rights to firm transmission capability for which there are no conflicting firm rights of use, for Export & Through System Transmission Service (provided that the Executing Transmission Owner has agreed to purchase from the RTO an annual Export & Through System Transmission Service Reservation.) CHANGES: THE CONCEPT OF TRANSMISSION CAPACITY RESERVATIONS APPEARS TO BE A CONTINUING CONCEPT IN THE CONGESTION MANAGEMENT WORK GROUP. HOWEVER, THE SPECIFICATIONS AS TO HOW TRANSMISSION CAPACITY RESERVATIONS ARE TO BE ALLOCATED MAY NEED TO BE REVISED TO CONFORM WITH THE SPECIFICATIONS PRODUCED BY THE CONGESTION MANAGEMENT WORK GROUP.

PPC -- May need to be revisited in light of the work of the Congestion Management WG.

NRU – Need to assure native load service over GTAs properly addressed.



BPA -- Need to assure that delivery of Canadian entitlement power properly addressed. In addition, the only existing uses/contracts missing from the list of transactions which will receive Transmission Capacity Reservations are those contracts between Participating Transmission Owners which are suspended upon RTO participation. Why are they excluded? Also, (4) in the list suggests that ownership of firm transmission capacity entitles the owner to a TCR, even if the owner is not using that capacity on a firm basis.

IPP Groups -- If a QF is interconnected with the distribution system of a participating transmission owner and has a must-take contract with its power purchaser, does the participating transmission owner get dealt a smaller TCR allocation because the QF generation is netted against the participating transmission owner's native load? What if the QF has a hybrid contract with the participating transmission owner, where part of the electrical output is bundled with transmission, while the remainder is must-take?

17. Billing and Payment; Right of Offset.
18. Records and Information Sharing.
19. Staffing.  
CHANGES: NO NEED FOR SUBSTANTIVE CHANGES TO ARTICLES 17, 18 AND 19 IDENTIFIED.
20. Limitation on Liability and Insurance. The WIES liability provisions are carried forward into the RTO. The parties intend to create no duties to third parties.  
CHANGES: THIS IS A COMPLEX ARTICLE THAT WAS WORKED OUT CAREFULLY WITH THE RISK MANAGEMENT OFFICERS OF THE VARIOUS COMPANIES. THESE PROVISIONS ARE BEING REVIEWED CLOSELY AGAIN IN ANOTHER LEGAL SUB GROUP. THE INITIAL RECOMMENDATION OF THAT OTHER SUB GROUP IS THAT THE LIABILITY PROVISIONS OF THE TCA NOT BE CARRIED FORWARD FOR THE RTO. REPLACEMENT LANGUAGE WILL BE NEEDED.
21. Dispute Resolution. The selected Dispute Resolution calls for an attempt at informal settlement, followed by arbitration. The Dispute Resolution provisions are comparable to the current WSCC and NRTA dispute resolution processes.  
CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED.

BPA – Reconsider use of a 3-member arbitration panel

B.C. Hydro – Some technical changes to dispute resolution for Canadian entities needed.

Seattle – Address whether arbitration should be mandatory.

22. Uncontrollable Force.
23. Assignments and Conveyances.
24. Confidentiality Obligations.
25. Miscellaneous.

CHANGES: NO NEED FOR SUBSTANTIVE CHANGES IDENTIFIED. THE INDEPENDENT TRANSMISSION COMPANY UTILITIES HAVE IDENTIFIED THE NEED FOR A PROVISION RESERVING THEIR UNILATERAL RIGHT TO LATER FILE WITH THE FERC TO SEEK ADDITIONAL AUTHORITY FOR THE INDEPENDENT TRANSMISSION COMPANY BEYOND THAT PROVIDED IN THE TCA.

Exhibit A --Schedule of Definitions:

Seattle -- (Exhibit A) The definition for "Transmission Facilities" which is said to be items listed in Exhibit C, then goes on to specify what belongs in Exhibit C seems awkward to me; it seems these ought to be tied directly together (i.e., "...Exhibit C to this Agreement, which Exhibit C includes.....". Also, for the consumer-owned entities it needs to recognize certain local jurisdictions (i.e. PUD or municipal government) as possessing the statutory authority to determine retail charges and specify which facilities are local distribution facilities (and thus excluded from Exhibit C). Moreover, the voltages that are appropriate to list here, which are in hot discussion in the other committees at this time, are yet to be determined, so this should be one of those items that falls into your TCA issues Group C (of issues to be discussed at a later date pending outcome of products from other committees).

Exhibit B -- Integration Agreements (currently blank)

Exhibit C -- Transmission Facilities (currently blank)

Exhibit D -- Pre-Existing Transmission Agreements (currently blank)

Exhibit E -- IndeGO Controlled Transmission Facilities (currently blank)

Exhibit F -- IndeGO Critical Control Facilities (currently blank)

Exhibit G -- Transmission Capacity Reservations (currently blank)

Exhibit H -- Access Pricing Areas (currently blank)

Exhibit I -- Methodology for Calculating the Access Area Rate and Adjustments thereto (currently blank)

ADDITIONAL ISSUE: ONE SUB GROUP MEMBER SEEKS A GUARANTEE IN THE TCA THAT END USER ACCESS TO THE RTO TRANSMISSION SYSTEM WOULD BE MADE AVAILABLE ONLY (A) IF THERE IS A STATE RETAIL ACCESS PROGRAM REQUIRING SUCH SERVICE, (B) IF SUCH END USERS ARE DSIS WITH RIGHTS TO SUCH SERVICE UNDER FEDERAL LAW, OR (C) IF THE FORMER (PRE-RTO) RETAIL SERVICE PROVIDER OF SUCH END USER VOLUNTARILY AGREES TO ALLOW SUCH SERVICE.

Duncan, Weinberg -- I disagree with the language mentioned by the unidentified comment (entity who submitted it) regarding eligibility.

PPC -- Miscellaneous Issues (perhaps needing additional thought)

(a) coop financing issues;

(b) the two-county rule;

(c) open architecture;